

EXTENSIONS OF REMARKS

CLEVELAND SCHOOL VOUCHER PROGRAM DECLARED UNCONSTITUTIONAL

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, December 15, 2000

Mr. CONYERS. Mr. Speaker, today I am pleased to offer for the record my congratulations to Judge Eric L. Clay of the United States Court of Appeals for the Sixth Circuit, an outstanding judge, and a man who possesses a high degree of common sense and pragmatism. Judge Eric L. Clay ruled that the Cleveland school voucher program was unconstitutional, because it did not present parents with a real set of options, and few non-religious private schools and no suburban public schools had opened their doors. He wrote, and I quote, "This scheme involves the grant of state aid directly and predominately to the coffers of private, religious, schools, and it is unquestioned that these institutions incorporate religious concepts, motives, and themes into all facets of their educational planning." Judge Clay is a 1997 Clinton appointee.

Given the current national debate around school vouchers, his ruling is of critical importance to a full understanding of the issue. 82% of the citizens of Detroit recently held a referendum, and voted down the use of school vouchers. It is my firm belief all children should have the opportunity to attend first class public schools that have the highest academic standards, and the best learning environment possible. This can be best achieved by reducing class size, hiring more teachers, teaching phonics, implementing mentoring and after school academic enrichment programs, universal Head Start, increasing teacher's salaries, and creating a world class public school infrastructure. School vouchers is a panacea that will only benefit a small percentage of our kids, and therefore, should be discarded as a viable policy alternative once and for all.

A RULING VOIDS USE OF VOUCHERS IN OHIO SCHOOLS

[From the New York Times, Dec. 12, 2000]

By Jodi Wilgoren

A Federal Appeals court declared a Cleveland school voucher program unconstitutional yesterday, upholding a lower court ruling that the use of public money to send thousands of children to parochial schools breaches the First Amendment's separation of church and state.

The 2-to-1 decision, which included a vitriolic exchange among the judges, sets the stage for a United States Supreme Court showdown on one of the most contentious issues in education politics today. It comes a month after voters in Michigan and California roundly rejected school voucher programs in ballot initiatives and is the most significant legal decision yet on the question.

"We certainly hope everyone will get the message," said Robert H. Chanin, general counsel for the National Education Association, the nation's largest teacher's union,

who argued the case for a group of parents and teachers challenging the vouchers. "The message is, let's focus on improving the public schools and stop playing around with vouchers as a panacea."

In the ruling, Judge Eric L. Clay of the United States Court of Appeals for the Sixth Circuit said the Cleveland program did not present parents with a real set of options, because few nonreligious private schools and no suburban public schools had opened their doors. In 1999-2000, 96 percent of the 3,761 voucher students attended sectarian schools, receiving up to \$2,500 each to offset tuition.

"This scheme involves the grant of state aid directly and predominately to the coffers of private, religious schools, and it is unquestioned that these institutions incorporate religious concepts, motives and themes into all facets of their educational planning," wrote Judge Clay, a 1997 Clinton appointee who was joined in the opinion by a 1991 Bush appointee, Judge Eugene E. Siler.

"There is no neutral aid when that aid principally flows to religious institutions," the decision said, "nor is there truly 'private choice' when the available choices resulting from the program are predominantly religious."

Voucher supporters promised to appeal the ruling and expressed confidence about their chances at the high court, which has hinted at its openness to vouchers in recent years with several 5-to-4 decisions allowing public money to be used in parochial schools for textbooks, transportation and teachers' aides.

"The day of reckoning is drawing closer," said Clint Bolick, a lawyer for the Washington-based Institute for Justice, which helped defend the voucher program. "This decision is a disaster for every schoolchild in America, but it will be short-lived."

Students in the Cleveland program will probably be allowed to finish the year at their current schools, lawyers for both sides said. The Supreme Court has already intervened once in the case, to allow voucher recipients to remain in parochial schools pending the appeal, and an extension of that order is expected.

"Whatever I have to do to keep her there, I'm going to do that," said Roberta Kitchen, guardian for Toshika Bacon, who uses a voucher to attend a Christian school.

"If it means borrowing, second job, go further into debt, having to juggle my bills around," Ms. Kitchen said, "whatever I need to come up with that tuition."

Cleveland's voucher program, which gives precedence to low-income families, has been in litigation since it began in 1995 and has long been seen by both sides as the likely test case bound for the Supreme Court. The justices have already declined to review the nation's oldest and largest voucher program, which began in Milwaukee in 1990 and was upheld by the State Supreme Court in 1998. In Florida, the legal battle over a statewide voucher program has focused so far on the mandate to provide public education, not the church-state question; a state appellate judge's ruling that the program is acceptable is being appealed to the Florida Supreme Court.

Apart from the constitutional disputes, the battle over vouchers concerns the very definition of the public-school system. A coalition of corporate philanthropists and improv-

erished parents back vouchers as a free-market solution to what they see as the failure of inner-city schools; the teachers' unions have spent millions of dollars fighting vouchers, which they and many educators believe would drain resources from the schools that most need them.

Vouchers were a main point of fissure in the education debate of this fall's presidential campaign. Vice President Al Gore vehemently opposes the use of any public money for private schools, while Gov. George W. Bush of Texas wants to give children in consistently failing schools \$1,500 in federal money to use however they like, including for tuition.

Yesterday's ruling in the Cleveland case, *Simmons-Harris v. Zelman*, comes a year after a lower-court federal judge struck down the program, saying it had "the effect of advancing religion through government-sponsored religious indoctrination."

Judges Clay and Siler acknowledged in their opinion that vouchers had been "the subject of intense political and public commentary, discussion and attention in recent years" but said they could not take part in the "academic discourse on practical solutions to the problem of failing schools."

Instead, they based their opinion largely on a 1973 Supreme Court ruling in a New York case, *Committee for Public Education v. Nyquist*, which rejected a tuition-reimbursement program for parents of private school students. Yesterday's ruling also pays close attention to the concurring opinion of Justice Sandra Day O'Connor—widely seen as the swing vote on vouchers—in a case from last term, *Mitchell v. Helms*, which upheld the purchase of computers for parochial schools.

"The voucher program at issue constitutes the type of 'direct monetary subsidies to religious institutions' that Justice O'Connor found impermissible," the Sixth Circuit judges said. "To approve this program would approve the actual diversion of government aid to religious institutions in endorsement of religious education, something 'in tension' with the precedents of the Supreme Court."

Judge James L. Ryan, appointed to the bench by President Ronald Reagan in 1985, submitted a sharp dissent accusing his fellow judges of "nativist bigotry" and denouncing the quality of Cleveland's public schools. He argued that the Supreme Court's rulings since the *Nyquist* case suggested a shift in thinking on subsidies to private and parochial schools and called the majority opinion "absurd" and "meritless."

"In striking down this statute today, the majority perpetuates the long history of lower federal court hostility to educational choice," Judge Ryan wrote, going on to call the ruling "an exercise in raw judicial power having no basis in the First Amendment or in the Supreme Court's Establishment Clause jurisprudence."

Judge Ryan's harsh words prompted the same from his colleagues. The majority complained of "hyperbole" and "gratuitous insults," saying "it is the dissent and its rhetoric which should not be taken seriously."

Gov. Bob Taft of Ohio, a Republican, declined to comment on the case, other than to express disappointment, as did the state's top education official, Susan Tave Zelman, who is named as a defendant. Neither Cleveland's mayor, Michael R. White, nor Barbara

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Byrd-Bennett, the chief executive officer of the Cleveland Municipal School District, could be reached for comment.

Betty D. Montgomery, Ohio's attorney general, released a statement saying, "The voucher pilot program empowers low-income Cleveland-area families whose children are trapped in a failing public school system."

As thousands of Cleveland families wondered how the decision might affect them, the combatants in the nation's voucher wars unleashed a sheaf of faxes celebrating or criticizing the latest legal salvo.

"This is a great early Christmas present for America's public schools and our constitutional principles," Barry W. Lynn, executive director of Americans United for Separation of Church and State, said in a press release.

The Center for Education Reform, a conservative group in Washington, described the Cleveland program as a "lifeline for thousands of disadvantaged young people."

"We've always believed and continue to believe that parents are a child's first teacher," said the group's president, Jeanne Allen. "And as such they and only they should decide where and how their children are educated."

On the other side was Ralph G. Neas, president of People for the American Way Foundation, who hailed the ruling as "a victory for the First Amendment and a victory for public education."

But it was a defeat for Mr. Bolick of the Institute for Justice. "The same Constitution that guarantees educational opportunities has been turned on its head to subvert them," he said.

CONGO: THE HEART OF DARKNESS?

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 15, 2000

Mr. WOLF. Mr. Speaker, I want to share with you this informative article from *The Economist* magazine that describes the critical problems facing the Congo and the Great Lakes region of Africa. The humanitarian crisis in the Congo is startling as between 1.7–2 million people have died in the past several months. Thirty percent of those who died were under the age of 5. Clearly, the situation in the Congo deserves the attention of the West and I hope every Member will have an opportunity to read this article.

[From the *Economist*, Dec. 9, 2000]

IN THE HEART OF DARKNESS

The hefty cargo plane grinds on across Africa, the deafening monotony of its engines never changing. The hold is stuffed with drums of fuel and crates of ammunition, spare parts for weapons and medical supplies. Perched among them are a dozen soldiers, one of whom is carrying a suitcase full of dollars. Three young women, one of them with a child, crouch among the drums with wrapped-up bundles, a couple of live chickens and several bunches of bananas.

The old Russian-made plane is flown by Ukrainians. They and the plane have been rented in Kiev by a Greek entrepreneur who also deals in coffee, timber and arms. This time he has hired it out to the Ugandan army, but it could have been made available to any one of the seven national armies at war in Congo. His business prospects look good. Peace is impossible just now.

Below, the forest stretches to the horizon in all directions, a vast head of dark trees

broken only by state-coloured rivers. Look down two hours later, and nothing has changed. It is as if the plane hasn't moved. Congo is big. Lay a map of Europe across Congo, with London at its western end, and the eastern border falls 200 miles beyond Moscow.

War in Congo does not involve huge armies and terrible battles, but a few guns can send hundreds of thousands fleeing their homes. It threatens Congo's nine neighbours with destabilisation, and with thousands of refugees pouring into their border areas. In the first week of December alone, by UN estimates, more than 60,000 refugees fled into Zambia from fighting that has just delivered the town of Pweto to Congo's anti-government rebels. War in Congo means a generation growing up without inoculation or education and the rapid spread of AIDS, the camp-follower of war in Africa. A recent United Nations report described Congo's war as one of the world's worst humanitarian crises, affecting some 16m people.

THE LEGACY OF GREED

Congo was only briefly a nation state. For most of history it was a blank on the map, luring in the greedy and unwary. It was first pillaged by the slave kingdoms and foreign slavers; then by predators looking for ivory, rubber, timber, copper, gold and diamonds.

Leopold, king of the Belgians, grabbed it in 1885 to make himself a private kingdom. That sparked the imperial takeover of Africa by Europeans at the end of the 19th century.

Leopold's agents cut off hands and heads to force the inhabitants to deliver its riches to him. Then came Belgian state rulers. They built some roads and brought in health and education programmes, but blocked any political development. When Congo was pitched into independence in 1960, there was chaos.

Congo nearly broke up; then out of the chaos came Mobutu Sese Seko, one of the more grotesque rulers of independent Africa. America and Europe supported him because he was anti-communist; but he was Leopold's true successor, regarding the country as his personal possession. He renamed it Zaire, used the treasury as his bank account and ruled by allowing supporters and rivals to feed off the state. If they became too greedy or powerful, he would have them thrown into prison for a while before being given another post to plunder. On two occasions he encouraged his unpaid, disgruntled soldiers to satisfy themselves by looting the cities. He built himself palaces and allowed the roads the Belgians had built to disintegrate. This helped break up Congo into fiefs. When Mobutu's rule ended in 1997, the nation state was dead. The only national organisation was the Catholic church.

One of his fiefs was Hutu-ruled Rwanda. Mobutu called its president, Juvenal Habyarimana, his baby brother. In 1994 Habyarimana was killed in a plane crash, and the rump of his regime carried out genocide against Rwanda's Tutsi minority. But, with Ugandan help, the Tutsis triumphed. The old Rwandan army and the gangs of killers fled into Congo, where Mobutu gave them shelter and weapons. In 1996 the new Tutsi-dominated Rwandan army crossed the border and attacked the Hutu camps, intending to set up a buffer zone to protect its western border. The attack worked better than anticipated and the Rwandans, Ugandans and their Congolese allies kept walking westwards until they took the capital, Kinshasa. Mortally ill, Mobutu fled and the Rwandans installed Laurent Kabila as president.

A year later, Mr. Kabila tried to wriggle out of the control of the Rwandans and Ugandans. He allied himself with their enemies, the Hutu militias in eastern Congo. In response they launched another rebellion to

try to dislodge him. But this time Angola, Zimbabwe, Namibia, Sudan and Chad sent troops to defend him. They said they were acting on principle, to protect a neighbouring state from invasion. The war reached a stalemate with the country divided. In the western half,

Mr. Kabila was backed by Zimbabwe, Angola and Namibia (Sudan and Chad withdrew). The east was controlled by three rebel movements and their creators and controllers, Uganda and Rwanda. Burundi also has troops in Congo allied to the Rwandans, but these stay close to the Burundi border.

In June and July last year, a peace agreement was signed in Lusaka by the government of Congo, the three rebel groups and five intervening nations. It provided a timetable for a ceasefire, the deployment of African military observers supported by UN monitors, the disarming of "negative forces" (the militia gangs that roam eastern Congo), and the eventual withdrawal of all foreign forces. It also prescribed a national dialogue between Mr. Kabila and the armed and unarmed opposition.

NEIGHBOURS ON THE TAKE

Unsurprisingly, it has not worked. The ceasefire has been persistently broken by all sides, most recently with the fighting around Pweto. Although the defense chiefs of six of the intervening countries, led by Zimbabwe, and several rebel groups signed a deal in Harare on December 6th to pull back their forces from front-line positions, it is still unlikely to happen. The exploitation of the country by the intervening armies reinforces the imperialist nature of the invasion, as do their disparaging comments about the Congo * * * "A hopeless people," remarked one Rwandan. "All they want to do is drink and dance."

Each of the interveners in Congo has complex and different reasons for being there. At one level, they have been sucked into the vacuum; social and population pressure east of Congo has drawn the neighbours towards a country with few people for its size and no state structures. But each also had internal political reasons for going to Congo.

The Rwandans want to track down the perpetrators of genocide and either drive them back to Rwanda or kill them. The success of the 1996 invasion and American support has made them over-confident. President Yoweri Museveni of Uganda also has ambitions bigger than his own country. He wants the economy of eastern Congo to link up with East Africa, and wants to replicate his own political system in Congo. The rebel Movement for the Liberation of Congo (MLC) was created by Uganda, and mimics Mr. Museveni's political analysis and ideology.

On the other side, Mr. Kabila's allies also have domestic reasons for being in Congo. Sudan, engaged in a proxy war with Uganda, wanted another way to attack it. Angola wanted to get into Congo to stop its own rebel movement, UNITA, from using Congolese territory as a supply route and rear base. Namibia got involved because it is indebted to Angola. President Robert Mugabe of Zimbabwe, jealous of South Africa's new power in southern Africa, wanted to make himself the region's military leader. Others loiter in the background: North Korea has sent some 400 soldiers to help train Mr. Kabila's fledgling army and tons of weapons, reportedly in exchange for future sales of copper, cobalt and uranium.

Many western diplomats and analysts, as well as most Congolese, suspect that America is secretly funding Rwanda and Uganda. State Department officials deny this, but it is hard to see how these poor countries can fight without outside resources. Their meagre defence budgets (Uganda's is allegedly